

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH CHESTER PARZYCK, III,
Plaintiff,

v.

EMILEE WILHELM-LEEN,
Defendant.

Case No. 18-04051 EJD (PR)

**ORDER OF SERVICE; DIRECTING
DEFENDANT TO FILE
DISPOSITIVE MOTION OR
NOTICE REGARDING SUCH
MOTION; INSTRUCTIONS TO
CLERK**

Plaintiff, a state prisoner, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983 for inadequate medical care.¹ The Court screened the complaint and dismissed it with leave to amend for Plaintiff to either file an amended complaint to correct deficiencies or proceed solely on the claim found cognizable against Defendant Emilee Wilhelm-Leen. (Docket No. 9.) Plaintiff has filed a response, stating that he wishes to proceed solely on the claim against Defendant Wilhelm-Leen. (Docket No. 12.) Accordingly, all other defendants and claims shall be stricken from the complaint, and the matter shall be proceed solely on the claim against Defendant Wilhelm-Leen.

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¹ This matter was reassigned to this Court on July 24, 2018. (Docket Nos. 5, 6.)

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

B. Plaintiff's Claims

Plaintiff claims that on June 10, 2017, he was booked into the Santa Clara County Jail with a fractured mandible after being seen and cleared at Valley Medical Center, with instructions to follow-up with a specialist. (Compl. at 3.) Plaintiff claims that Defendant Dr. Emilee Wilhelm-Leen, who treated him at the Santa Clara County Jail, refused to refer him to a specialist for a follow-up, which resulted in prolonged pain and suffering. (Id. at 4.) Liberally construed, this claim is sufficient to state a deliberate indifference claim under the Eighth Amendment.

In accordance with Plaintiff's wishes, Defendants Sheriff Laurie White and the Santa Clara County Sheriff's Department and the claims against them shall be stricken from the complaint. (Docket No. 12.)

CONCLUSION

For the reasons state above, the Court orders as follows:

1 1. The Clerk of the Court shall mail a Notice of Lawsuit and Request for
2 Waiver of Service of Summons, two copies of the Waiver of Service of Summons, a copy
3 of the amended complaint, (Docket No. 7), all attachments thereto, (Docket No. 1-1), and a
4 copy of this order upon **Defendant Dr. Emilee Wilhelm-Leen** at the **Santa Clara County**
5 **Jail, Elmwood Complex, (701 South Abel St., Milpitas, CA 95035)**. The Clerk shall
6 also mail a copy of this Order to Plaintiff.

7 2. Defendants are cautioned that Rule 4 of the Federal Rules of Civil
8 Procedure requires them to cooperate in saving unnecessary costs of service of the
9 summons and the amended complaint. Pursuant to Rule 4, if Defendants, after being
10 notified of this action and asked by the Court, on behalf of Plaintiff, to waive service of the
11 summons, fail to do so, they will be required to bear the cost of such service unless good
12 cause shown for their failure to sign and return the waiver form. If service is waived, this
13 action will proceed as if Defendants had been served on the date that the waiver is filed,
14 except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file
15 an answer before **sixty (60) days** from the day on which the request for waiver was sent.
16 (This allows a longer time to respond than would be required if formal service of summons
17 is necessary.) Defendants are asked to read the statement set forth at the foot of the waiver
18 form that more completely describes the duties of the parties with regard to waiver of
19 service of the summons. If service is waived after the date provided in the Notice but
20 before Defendants have been personally served, the Answer shall be due sixty (60) days
21 from the date on which the request for waiver was sent or twenty (20) days from the date
22 the waiver form is filed, whichever is later.

23 3. No later than **ninety-one (91) days** from the date service is complete, either
24 by a signed waiver or personal service of the amended complaint, Defendants shall file a
25 motion for summary judgment or other dispositive motion with respect to the claims in the
26 amended complaint found to be cognizable above.

27 a. Any motion for summary judgment shall be supported by adequate
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1 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of
2 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor
3 qualified immunity found, if material facts are in dispute. If any Defendant is of the
4 opinion that this case cannot be resolved by summary judgment, he shall so inform the
5 Court prior to the date the summary judgment motion is due.

6 b. In the event Defendants file a motion for summary judgment, the
7 Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate
8 warnings under Rand v. Rowland, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See
9 Woods v. Carey, 684 F.3d 934, 940 (9th Cir. 2012).

10 4. Plaintiff's opposition to the dispositive motion shall be filed with the Court
11 and served on Defendants no later than **twenty-eight (28) days** from the date Defendants'
12 motion is filed.

13 Plaintiff is also advised to read Rule 56 of the Federal Rules of Civil Procedure and
14 Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (holding party opposing summary judgment
15 must come forward with evidence showing triable issues of material fact on every essential
16 element of his claim). Plaintiff is cautioned that failure to file an opposition to
17 Defendants' motion for summary judgment may be deemed to be a consent by Plaintiff to
18 the granting of the motion, and granting of judgment against Plaintiff without a trial. See
19 Ghazali v. Moran, 46 F.3d 52, 53–54 (9th Cir. 1995) (per curiam); Brydges v. Lewis, 18
20 F.3d 651, 653 (9th Cir. 1994).

21 5. Defendants shall file a reply brief no later than **fourteen (14) days** after
22 Plaintiff's opposition is filed.

23 6. The motion shall be deemed submitted as of the date the reply brief is due.
24 No hearing will be held on the motion unless the Court so orders at a later date.

25 7. All communications by the Plaintiff with the Court must be served on
26 Defendants, or Defendants' counsel once counsel has been designated, by mailing a true
27 copy of the document to Defendants or Defendants' counsel.


1 8. Discovery may be taken in accordance with the Federal Rules of Civil
2 Procedure. No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local
3 Rule 16-1 is required before the parties may conduct discovery.

4 9. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the
5 court informed of any change of address and must comply with the court's orders in a
6 timely fashion. Failure to do so may result in the dismissal of this action for failure to
7 prosecute pursuant to Federal Rule of Civil Procedure 41(b).

8 10. Extensions of time must be filed no later than the deadline sought to be
9 extended and must be accompanied by a showing of good cause.

10 **IT IS SO ORDERED.**

11 Dated: 12/10/2018



EDWARD J. DAVILA
United States District Judge